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STATUTORY INSTRUMENTS

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**2010 No. 680**

**MERCHANT SHIPPING**

**SAFETY**

**The Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010**

<i>Made</i>	- - - -	<i>8th March 2010</i>
<i>Laid before Parliament</i>		<i>12th March 2010</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 85(1)(a) and (b), (3) and (5) to (7) and section 86(1) of the Merchant Shipping Act 1995(1). In accordance with section 86(4) of that Act the Secretary of State has consulted the persons referred to in that section.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010.

(2) These Regulations come into force on 6th April 2010.

**Interpretation**

2. In these Regulations, save where the context otherwise requires—

“the 1995 Act” means the Merchant Shipping Act 1995;

“certifying authority” means the Secretary of State, one of the organisations which is an authorised organisation for the purposes of the Merchant Shipping (Ship Inspection and Survey Organisations) Regulations 1996(2) or the Sea Fish Industry Authority;

“mandatory safety requirements”, in relation to a ship, means the requirements identified as such in the Safety Code, which include requirements that are concerned with the operation of the ship;

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(1) 1995 c.21. Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), sections 8 and 29(2) and Schedule 7 Part 1.  
(2) S.I. 1996/2908; an “authorised organisation” is defined in regulation 2 of those Regulations.

“MCA” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“Merchant Shipping Notice” means a notice described as such and issued by the MCA, and a reference to a particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is stated to be considered by the Secretary of State to be relevant from time to time;

“Partial Declaration of Survey of a Passenger Ship” means a document by that name that by virtue of regulation 6, 7 or 10 is required to have been issued before a passenger ship safety certificate is issued or endorsed;

“passenger ship safety certificate” means a certificate issued in accordance with the Safety Code;

“Safety Code” means the Safety Code for Passenger Ships operating solely in UK categorised waters set out in Merchant Shipping Notice 1823 (M);

“safety management system requirements”, in relation to a ship, means the mandatory safety requirements that relate to the safety management system of the ship that the Safety Code requires must be in place;

“safety management system in-service verification” means a verification of the safety management system requirements of a ship or any alternative that has been permitted under regulation 5 undertaken by the MCA as described in section 24 of the Safety Code;

“Sea Fish Industry Authority” means the body by that name established by section 1 of the Fisheries Act 1981<sup>(3)</sup>; and

“surveyor” means a surveyor of ships and “survey” means a survey carried out by a surveyor.

## Application

3.—(1) Subject to paragraph (2), these Regulations apply to new passenger ships engaged only on voyages in UK categorised waters.

(2) These Regulations do not apply to—

(a) high speed craft as defined in regulation 2(1) of the Merchant Shipping (High Speed Craft) Regulations 2004<sup>(4)</sup>;

(b) any ship—

(i) the keel of which was laid, or which had reached a similar stage of construction, on a day that falls within the period of two years prior to the operative date;

(ii) in respect of which the Secretary of State has issued a determination in writing to the effect that the ship cannot reasonably be expected to comply with the mandatory safety requirements; and

(iii) which is made subject to an initial survey under regulation 4(a) of the 1995 Regulations and in respect of which, in consequence of the completion of that survey, a passenger certificate was issued not more than two years after the day referred to in paragraph (i);

(c) any ship—

(i) that was laid up on a day that falls within the period of five years prior to the operative date;

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<sup>(3)</sup> 1981 c.29.

<sup>(4)</sup> S.I. 2004/302.

- (ii) in respect of which the Secretary of State has issued a determination in writing to the effect that the ship cannot reasonably be expected to comply with the mandatory safety requirements; and
  - (iii) which is made subject to an initial survey under regulation 4(a) of the 1995 Regulations and in respect of which, in consequence of the completion of that survey, a passenger certificate was issued not more than five years after the day it was laid up or two years after the operative date whichever is the earlier;
- (d) any ship—
- (i) that was the subject of a major modification commenced on a day that falls within the period of two years prior to the operative date;
  - (ii) in respect of which the Secretary of State has issued a determination in writing to the effect that the ship cannot reasonably be expected to comply with the mandatory safety requirements; and
  - (iii) which is made subject to an initial survey under regulation 4(a) of the 1995 Regulations and in respect of which, in consequence of the completion of that survey, a passenger certificate was issued not more than two years after the day that major modification commenced.
- (3) For the purpose of this regulation—
- (a) “the 1995 Regulations” means the Merchant Shipping (Survey and Certification) Regulations 1995(5);
  - (b) “UK categorised waters” means the waters specified as category A, B, C or D waters in Merchant Shipping Notice 1776 (M);
  - (c) “laid up”, in relation to a ship, means a ship that has been taken out of service and is not the subject of a valid passenger certificate on the operative date;
  - (d) “major modification”, in relation to a ship, means a modification that substantially alters the passenger carrying capacity of that ship or substantially increases the expected life of that ship;
  - (e) “new passenger ship” means a passenger ship in respect of which there does not exist, on the operative date, a valid passenger certificate;
  - (f) “operative date” means the date these Regulations come into force;
  - (g) “passenger certificate” means a certificate issued under regulation 11(a) of the 1995 Regulations;
  - (h) “passenger ship” means a ship carrying more than 12 passengers, however propelled; and
  - (i) “similar stage of construction”, in relation to a ship, means that construction identifiable with a specific ship has begun and assembly of that ship has incorporated 50 tonnes of structural material or 1% of the estimated mass of all structural material, whichever is less.

## Exemptions

4.—(1) The Secretary of State may, on application made by the owner or master of a ship, grant exemptions from the requirements set out in regulation 6, 7, 10 or 11 or from all or any of the mandatory safety requirements (as are specified in the exemption) on such terms (if any) as the Secretary of State may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

(2) In a case where an exemption from any of the mandatory safety requirements is granted under this regulation, any provision in these regulations requiring—

- (a) a surveyor to determine whether a ship fully complies with the mandatory safety requirements,
- (b) a surveyor to determine whether there is sufficient evidence in place that safety management system requirements are being properly and effectively implemented, or
- (c) an owner or master to ensure that a ship continues to comply with those requirements,

does not extend to the requirements the subject of the exemption, but does extend to any terms specified by the Secretary of State as terms to which the exemption is subject.

### **Equivalents**

5.—(1) The Secretary of State may, on application made by the owner or master of a ship, permit an alternative to that required by any mandatory safety requirement if that alternative is at least as effective as that required by that mandatory safety requirement.

(2) Paragraph (1) applies only to an application that has been endorsed by a surveyor to the effect that the grant of the permission in respect of the ship concerned will not cause the ship to cease to be fit for the purpose for which it is intended.

(3) A permission given under paragraph (1) is valid only if it is given in writing and specifies the date on which it takes effect.

### **Requirement for a passenger ship safety certificate – initial survey**

6.—(1) Subject to regulation 4, a ship must not—

- (a) be put into service, or
- (b) (if it is already in service) continue in service

unless the requirements set out in paragraph (2) are met.

(2) The requirements are that—

- (a) a survey has been carried out in respect of the ship;
- (b) at the date of that survey the surveyor carrying out that survey is satisfied that—
  - (i) a Partial Declaration of Survey of a Passenger Ship has been issued in respect of the ship not more than three months before that date; and
  - (ii) the ship fully complies with the mandatory safety requirements or any alternative that has been permitted under regulation 5; and
- (c) a passenger ship safety certificate in the form shown in Annex 8 to the Safety Code has been issued in respect of the ship and is still valid.

(3) For the purpose of paragraph (2)(b), a ship fully complies with such of the mandatory safety requirements as are concerned with the operation of the ship if the surveyor is satisfied that there is sufficient evidence of procedures in place to indicate that the ship is able to fully comply with those operating requirements or any alternative that has been permitted under regulation 5.

(4) For the purpose of this regulation, a Partial Declaration of Survey of a Passenger Ship is a document by that name issued by a certifying authority in the form shown in Annex 9 to the Safety Code asserting that in the opinion of that authority—

- (a) the ship the subject of the Declaration has been constructed in accordance with the construction standards of that authority, and
- (b) the workmanship of all the parts of the ship and its equipment is in all respects satisfactory.

### **Requirement for a passenger ship safety certificate – renewal survey**

7.—(1) Subject to regulation 4, a ship must not—

- (a) be put into service, or
- (b) (if it is already in service) continue in service,

after the date of expiry of a passenger ship safety certificate issued in respect of the ship under these Regulations unless the requirements set out in paragraph (2) are met.

(2) The requirements are that—

- (a) a survey has been carried out in respect of the ship within the period of three months prior to the date of expiry of the passenger ship safety certificate;
- (b) at the date of that survey the surveyor carrying out that survey is satisfied that—
  - (i) a Partial Declaration of Survey of a Passenger Ship has been issued in respect of the ship not more than three months before the date of expiry of the passenger ship safety certificate; and
  - (ii) the ship fully complies with the mandatory safety requirements or any alternative that has been permitted under regulation 5; and
- (c) a passenger ship safety certificate in the form shown in Annex 8 to the Safety Code has been issued in respect of the ship and is still valid.

(3) For the purpose of paragraph (2)(b), a ship fully complies with such of the mandatory safety requirements that are concerned with the operation of the ship if the surveyor is satisfied that there is sufficient evidence of procedures in place to indicate that the ship is able to fully comply with those operating requirements or any alternative that has been permitted under regulation 5.

(4) For the purpose of this regulation, a Partial Declaration of Survey of a Passenger Ship is a document by that name issued by a certifying authority, other than the Sea Fish Industry Authority, in the form shown in Annex 9 to the Safety Code asserting that in the opinion of that authority—

- (a) the ship the subject of the Declaration fully complies with the construction standards of that authority, and
- (b) the ship is fit for the purpose for which it is intended.

### **Issue of a passenger ship safety certificate**

8.—(1) Subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2006(6), on being notified by a surveyor that the surveyor—

- (a) has carried out an initial survey or a renewal survey in respect of a ship to which these Regulations apply, and
- (b) is satisfied at the date of the survey that the requirements of paragraph (2)(b) of regulation 6 or 7, as the case may be, are met,

the Secretary of State must issue a passenger ship safety certificate in respect of that ship in the form shown in Annex 8 to the Safety Code.

(2) For the purpose of this regulation—

- (a) “initial survey” means a survey carried out under regulation 6; and
- (b) “renewal survey” means a survey carried out under regulation 7.

### **Passenger ship safety certificate conditions**

9. The Secretary of State may issue a passenger ship safety certificate subject to conditions—
- (a) limiting the geographical area beyond which the ship may not operate with passengers;
  - (b) limiting the number of passengers the ship may carry; or
  - (c) which the Secretary of State considers appropriate for the purpose of securing and maintaining the safety of the ship.

### **Requirement for a passenger ship safety certificate – annual survey**

10.—(1) Subject to regulation 4, a ship must not—

- (a) be put into service, or
- (b) (if it is already in service) continue in service,

after the end of any annual survey period for the ship unless the requirements set out in paragraph (2) are met.

(2) The requirements are that—

- (a) a survey has been carried out in respect of the ship;
- (b) the surveyor carrying out that survey is satisfied that—
  - (i) a Partial Declaration of Survey of a Passenger Ship has been issued in respect of the ship not more than three months before the anniversary date; and
  - (ii) the ship fully complies with the mandatory safety requirements or any alternative that has been permitted under regulation 5; and
- (c) the surveyor carrying out that survey has endorsed the passenger ship safety certificate issued in respect of the ship to that effect in the form shown in Annex 8 to the Safety Code by the anniversary date.

(3) For the purpose of paragraph (2)(b)(ii), a ship fully complies with such of the mandatory safety requirements that are concerned with the operation of the ship if the surveyor is satisfied that there is sufficient evidence of procedures in place to indicate that the ship is able to fully comply with those operating requirements or any alternative that has been permitted under regulation 5.

(4) For the purpose of this regulation, a Partial Declaration of Survey of a Passenger Ship is a document by that name issued by a certifying authority, other than the Sea Fish Industry Authority, in the form shown in Annex 9 to the Safety Code asserting that in the opinion of that authority—

- (a) the ship the subject of the Declaration fully complies with the construction standards of that authority, and
- (b) the ship is fit for the purpose for which it is intended.

(5) In this regulation—

“anniversary date”, in relation to a ship, means the day and month each year which corresponds to the date of expiry of the passenger ship safety certificate which has been issued and which is still valid in respect of that ship; and

“annual survey period” means the period of three months ending on the anniversary date.

### **Safety management system**

11.—(1) A ship must not continue in service past a date when a safety management system in-service verification is carried out by a surveyor unless paragraph (2) or (3) is satisfied.

(2) This paragraph is satisfied when the surveyor carrying out the in-service verification referred to in paragraph (1) has endorsed the passenger ship safety certificate issued in respect of the ship to

the effect that the surveyor is satisfied as a result of that in-service verification that there is sufficient evidence that the safety management system requirements of the ship, or any alternative that has been permitted under regulation 5, are being properly and effectively implemented in accordance with the form shown in Annex 8 to the Safety Code.

- (3) This paragraph is satisfied when—
- (a) the surveyor carrying out the in-service verification referred to in paragraph (1) is not satisfied as described in paragraph (2) and advises the owner or master of the ship of the corrective action which the surveyor considers to be required as described in regulation 18(1)(b); and
  - (b) that surveyor, or another surveyor, is satisfied in consequence of that corrective action being taken that there is sufficient evidence that the safety management system requirements of the ship, or any alternative that has been permitted under regulation 5, are being properly and effectively implemented; and endorses the passenger ship safety certificate accordingly in accordance with the form shown in Annex 8 to the Safety Code.
- (4) A person must not intentionally obstruct or impede a surveyor seeking to carry out a safety management system in-service verification on a ship.

#### **Duration and validity of passenger ship safety certificate**

**12.**—(1) Subject to paragraphs (2) to (4), a passenger ship safety certificate issued in respect of a ship is valid for such a period as is specified in the certificate, not exceeding 5 years beginning with the date of the relevant initial or renewal survey carried out under regulation 6 or 7.

(2) Subject to paragraphs (3) and (4), where a renewal survey carried out under regulation 7 is completed within the period of three months referred to in regulation 7(2), the new passenger ship safety certificate is valid additionally during the period between the date the survey is carried out and the end of that three month period.

- (3) A passenger ship safety certificate issued in respect of a ship ceases to be valid—
- (a) upon the date of expiry of the certificate;
  - (b) upon a new passenger ship safety certificate being issued in respect of the ship; or
  - (c) if the certificate is cancelled by the Secretary of State.
- (4) A passenger ship safety certificate issued in respect of a ship is not valid—
- (a) during any period when any condition subject to which the certificate is issued is not complied with;
  - (b) for so long as the certificate is suspended by the Secretary of State;
  - (c) during any period, following the end of the annual survey period referred to in regulation 10 relevant to the ship, while the requirements set out in regulation 10(2) are not met; or
  - (d) during any period, following the date on which a safety management system in-service verification is carried out in respect of the ship, while neither paragraph (2) nor paragraph (3) of regulation 11 is satisfied.

#### **Suspension of passenger ship safety certificate**

**13.**—(1) The Secretary of State may suspend a passenger ship safety certificate where the Secretary of State has reason to believe that since the completion of any survey required by or under these Regulations, the structure, equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) Immediately on suspending a passenger ship safety certificate under paragraph (1), the Secretary of State must give notice of the suspension to the owner and the master of the ship.

### **Cancellation of passenger ship safety certificate**

**14.**—(1) The Secretary of State may cancel a passenger ship safety certificate where the Secretary of State has reason to believe that—

- (a) the certificate or the Partial Declaration of Survey of a Passenger Ship issued in respect of the ship in question was issued on false or erroneous information; or
- (b) any endorsement of the certificate was made on the basis of false or erroneous information.

(2) Immediately on cancelling a passenger ship safety certificate under paragraph (1), the Secretary of State must give notice of the cancellation to the owner and the master of the ship.

### **Arbitration**

**15.**—(1) Paragraph (2) applies where the owner or the master of a ship is dissatisfied with—

- (a) a decision made by the Secretary of State not to issue a Partial Declaration of Survey of a Passenger Ship in respect of that ship; or
- (b) the outcome of a survey or safety management system in-service verification carried out by a surveyor in respect of that ship under these Regulations.

(2) Where this paragraph applies the owner or the master may serve a written notice on the Secretary of State or surveyor, as the case may be, within 21 days of receiving notification of that decision or outcome—

- (i) stating that there is a dispute between them; and
- (ii) requesting that the dispute be referred to a single arbitrator.

(3) Subject to paragraph (4), an arbitrator referred to in paragraph (2) must be appointed by agreement between the person who served the notice and the Secretary of State or surveyor concerned, as the case may be.

(4) In default of agreement between the person who served the notice and the Secretary of State or surveyor concerned, as the case may be, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators following a request made by—

- (a) one party, after giving written notice to the other party; or
- (b) the parties jointly,

but this paragraph does not apply in relation to Scotland.

(5) No person is to be an arbitrator under this regulation unless that person is a member of the Chartered Institute of Arbitrators with specialist knowledge of the shipping industry.

(6) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 259 of the 1995 Act.

(7) In the application of this regulation to Scotland—

- (a) any reference to an arbitrator is to be construed as a reference to an arbiter; and
- (b) the reference in paragraph (3) to an arbitrator appointed by agreement between the person who served the notice and the Secretary of State or surveyor concerned is to be construed as a reference to a single arbiter so appointed or, in default of agreement, appointed by a sheriff.

(8) The rules for arbitration set out in Merchant Shipping Notice No. M.1613 apply unless alternative procedures are agreed between the person who served the notice and the Secretary of State or surveyor concerned before the commencement of arbitration proceedings.



### **Availability of passenger ship safety certificate**

16. The owner and the master of a ship must ensure that the passenger ship safety certificate issued in respect of the ship and any survey report issued under regulation 19(3) are readily available on board the ship for examination by a surveyor at all times.

### **Continuing responsibilities of the owner and the master**

17.—(1) The owner and the master of a ship must ensure that—

- (a) the structure of the ship is maintained in a satisfactory condition fit for the purpose for which the ship is intended; and
- (b) the mandatory safety requirements, any terms specified in an exemption granted under regulation 4, or any alternative that has been permitted under regulation 5, are and continue to be met.

(2) The owner and the master of a ship must ensure that after any survey of the ship required by these Regulations has been completed no change, except by way of direct replacement, is made to the ship or to any of the machinery, arrangements, appliances, systems, equipment or other matters covered by the survey of the ship without the approval of a surveyor.

(3) Whenever—

- (a) an accident occurs to a ship, or
- (b) a defect is discovered in a ship,

which substantially affects the safety of the ship the owner and the master must report that accident or defect at the earliest opportunity to the Secretary of State and (where different) to the certifying authority that issued the Partial Declaration of Survey of a Passenger Ship in respect of the ship.

(4) Whenever an accident or defect is reported to the Secretary of State in accordance with paragraph (3), the Secretary of State must cause an investigation to be initiated to determine whether an additional survey is necessary.

### **Procedure to be adopted when a ship is deficient**

18.—(1) Where a surveyor has—

- (a) determined that the structure of a ship, or its equipment or operating procedures (including its safety management system requirements), does not or do not fully comply with the mandatory safety requirements or any alternative that has been permitted under regulation 5,
- (b) advised the owner or the master of the ship of the corrective action which the surveyor considers to be required and the time within which the surveyor considers it reasonable for that corrective action to be taken, and
- (c) informed the Secretary of State that the corrective action has not been taken within that time,

the Secretary of State may suspend the passenger ship safety certificate issued in respect of the ship until the corrective action is taken.

(2) Immediately on suspending a passenger ship safety certificate under paragraph (1), the Secretary of State must give notice of the suspension to the owner and the master of the ship and the surveyor in question.

### **Additional surveys**

19.—(1) This regulation applies to a ship where—

- (a) an additional survey has been required to be carried out under regulation 17(4); or
  - (b) an important repair or renewal has been made to the ship.
- (2) A ship to which this regulation applies must not be put into service or, if it is already in service, continue in service unless the requirements set out in paragraph (3) are met.
- (3) The requirements are that—
- (a) a survey has been carried out in respect of the ship;
  - (b) at the date of that survey the surveyor carrying out that survey is satisfied that—
    - (i) the ship is in a satisfactory condition fit for the purpose for which the ship is intended; and
    - (ii) where an important repair or renewal has been made to the ship that repair or renewal has been made effectively and the materials used in, and the workmanship of, that repair or renewal are satisfactory in all respects; and
  - (c) the surveyor has issued a survey report expressing the satisfaction required by subparagraph (b).
- (4) Where an owner or master of a ship serves a written request upon the Secretary of State seeking advice as to whether a repair or renewal effected or intended to be effected in respect of that ship is an important repair or renewal for the purposes of this regulation, that repair or renewal is to be regarded as not an important repair or renewal for those purposes unless the Secretary of State advises otherwise within 21 days of receiving that request.

#### **Surrender of passenger ship safety certificate**

- 20.**—(1) The Secretary of State may require that a passenger ship safety certificate, which has expired or has been suspended or cancelled, is to be surrendered within such time and in such manner as the Secretary of State may in writing direct.
- (2) No person may fail to surrender a passenger ship safety certificate where required to do so under paragraph (1).

#### **Miscellaneous provisions relating to Partial Declarations and to certificates**

- 21.** No person may—
- (a) intentionally alter a Partial Declaration of Survey of a Passenger Ship or a passenger ship safety certificate;
  - (b) intentionally make a false Partial Declaration of Survey of a Passenger Ship or a false passenger ship safety certificate;
  - (c) knowingly or recklessly provide false information in connection with a Partial Declaration of Survey of a Passenger Ship or a survey required, or safety management system in-service verification undertaken, under these Regulations;
  - (d) with intent to deceive, use or lend a Partial Declaration of Survey of a Passenger Ship or a passenger ship safety certificate or permit the same to be used by another person; or
  - (e) in Scotland, forge a Partial Declaration of Survey of a Passenger Ship or a passenger ship safety certificate.

#### **Detention**

- 22.**—(1) Where a surveyor has made a determination and provided advice under regulation 18 or has clear grounds for believing that—

- (a) a passenger ship safety certificate is required to have been issued in respect of the ship but has not been issued, or has been issued but is not valid,
- (b) the structure of the ship is not in a satisfactory condition fit for the purpose for which the ship is intended,
- (c) the ship does not fully comply with the mandatory safety requirements or any alternative that has been permitted under regulation 5,
- (d) the master or crew are not competent to operate the ship, or
- (e) an offence under regulation 23 is being committed in respect of the ship,

that ship is liable to be detained until a surveyor is satisfied that it can proceed on a voyage with passengers without any unreasonable safety risk arising.

(2) Section 284 of the 1995 Act (enforcing detention of a ship)(7) applies where a ship is liable to be detained under paragraph (1) as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under paragraph (1) of this regulation; and
- (b) subsection (7) were omitted.

(3) Where a ship is liable to be detained under paragraph (1), the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the 1995 Act.

(4) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(5) A ship must not be delayed or detained unreasonably under this regulation.

(6) Where a ship is detained under paragraph (1), a person having power to detain the ship must, at the request of the owner or master, immediately release the ship—

- (a) if no proceedings for an offence under regulation 23 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under regulation 23, having been instituted within that period, are concluded without the owner, master or other person in question being convicted;
- (c) if either—
  - (i) the sum of £30,000 is paid to the Secretary of State by way of security, or
  - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the owner, master or other person in question;
- (d) where the owner, master or other person in question is convicted of an offence under regulation 23, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982(8), and any bond or other financial security ordered by such court or tribunal is posted.

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(7) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), section 9 and Schedule 1 paragraph 5.

(8) Cmnd. 8941.

(7) The Secretary of State must repay any sum paid in pursuance of paragraph (6)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 23 are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) if proceedings for an offence under regulation 23, having been instituted within that period, are concluded without the owner, master or other person in question being convicted.

(8) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (6)(c) and the owner, master or other person in question is convicted of an offence under regulation 23, the sum so paid or the amount made available under the security must be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the owner, master or other person in question, and
- (b) next in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(9) Section 145 of the 1995 Act (interpretation of section 144) applies for the purposes of paragraphs (6) to (8) as if references to an offence under section 131 were references to an offence under regulation 23.

## Offences

**23.**—(1) Any contravention of—

- (a) regulation 6(1), 7(1), 10(1), 11(1), 16, 17(1), (2) or (3) or 19(2) is an offence by the owner and the master of the ship;
- (b) regulation 11(4), 20(2) or 21 is an offence by the person in question.

(2) An offence under paragraph (1) is punishable—

- (a) on summary conviction by a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

(3) In any proceedings for an offence under paragraph (1), it is a defence for the person charged to prove that that person took all reasonable steps and exercised all due diligence to ensure that the provision in question was complied with.

(4) Where an offence under paragraph (1) is committed, or would be committed save for the operation of paragraph (3), by any person due to the act or default of some other person, that other person is also guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first mentioned person.

## Amendments

**24.** The instruments specified in column 1 of the Schedule are amended to the extent specified in column 2.

Signed by authority of the Secretary of State for Transport

8th March 2010

*Paul Clark*  
Parliamentary Under Secretary of State  
Department for Transport

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULE

Regulation 24

## Statutory instruments amended

Column 1	Column 2
The Merchant Shipping (Emergency Information for Passengers) Regulations 1990(9)	In regulation 3 at the beginning insert— “Subject to regulation 3A.”.  After regulation 3 insert—  “3A. These Regulations do not apply to passenger ships to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.
The Merchant Shipping (Survey and Certification) Regulations 1995(10)	In regulation 2(1) after “1997 apply” insert—  “, passenger ships to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.
The Merchant Shipping (Fire Protection: Small Ships) Regulations 1998(11)	In regulation 1(7)(b) at the end insert—  “(vi) any passenger ship to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.
The Merchant Shipping (Code of Safe Working Practices for Merchant Seamen) Regulations 1998(12)	In regulation 3 for “fishing vessels and pleasure vessels” substitute —  “fishing vessels, pleasure vessels and any vessels to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.
The Merchant Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998(13)	In regulation 3A at the end insert—  “or to any passenger ship to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.
The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999(14)	In regulation 4(2)(b) omit “or”.  After regulation 4(2)(c) insert—  “, or

(9) S.I. 1990/660.

(10) S.I. 1995/1210. Regulation 2 is amended by S.I. 1996/3188 and 2004/302.

(11) S.I. 1998/1011 amended by S.I. 1999/992 and 1957, 2000/2687, 2003/2951, 2004/302 and 2005/2114.

(12) S.I. 1998/1838.

(13) S.I. 1998/2515 Regulation 3A was added by S.I. 2000/2687.

(14) S.I. 1999/1869.

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- (d) passenger ship to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.

The Merchant Shipping (Life-Saving Appliances For Passenger Ships of Classes III to VI(A)) Regulations 1999**(15)** In regulation 4A at the end insert—

“or to any passenger ship to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.

The Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2000**(16)** In regulation 4(2) (g) omit “or”.

After sub- paragraph (h) insert—

“, or

- (i) a passenger ship to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply”.

The Merchant Shipping (Domestic Passenger Ships) (Safety Management Code) Regulations 2001**(17)** After regulation 3(3) add—

“(4) These Regulations do not apply to passenger ships to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.

In regulation 6(3) omit paragraph (a) and in paragraph (b) omit “in accordance with paragraph (a)”.

The Merchant Shipping (Safety of Navigation) Regulations 2002**(18)** At the end of regulation 4(2)(b) omit “or”.

After sub-paragraph (c) insert—

“, or

- (d) passenger ships to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply.”.

The Merchant Shipping (Bridge Visibility) (Small Passenger Ships) Regulations 2005**(19)** In regulation 3(1) for “paragraph (3)” substitute—

“paragraphs (3) and (4)”.

After regulation 3(3) add—

**(15)** [S.I. 1999/2723](#). Regulation 4A was added by [S.I. 2000/2687](#).

**(16)** [S.I. 2000/2687](#). Regulation 4 is amended by [S.I. 2004/302](#).

**(17)** [S.I. 2001/3209](#). Regulation 3 is amended by [S.I. 2004/302](#).

**(18)** [S.I. 2002/1473](#) to which there are amendments not relevant to these Regulations.

**(19)** [S.I. 2005/2286](#).

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“(4) These Regulations do not apply to passenger ships to which Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010 apply”.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations consolidate and amend safety requirements for certain passenger ships that operate solely on inland waterways.

The Regulations provide for the application of a safety code (and the consequential disapplication of a number of safety-related statutory instruments) to passenger ships carrying more than 12 passengers and engaged only on voyages in UK categorised waters (*regulation 3(1)*). *Regulation 3(2)* sets out exceptions for any ship that—

- a) possesses a passenger certificate issued under the Merchant Shipping (Survey and Certification) Regulations 1995;
- b) is a high speed craft;
- c) had its keel laid no more than 2 years before the date these Regulations come into force, is determined by the Secretary of State to be a ship that cannot reasonably be expected to comply with the requirements of the safety code and secures a passenger certificate under the 1995 Regulations within 2 years of that keel laying date;
- d) was laid up in the period of 5 years before the date these Regulations come into force, is determined by the Secretary of State to be a ship that cannot reasonably be expected to comply with the requirements of the safety code and secures a passenger certificate under the 1995 Regulations within 5 years of being laid up or 2 years of that coming into force date, whichever is soonest; or
- e) has been the subject of major modification that commenced no more than 2 years before the date these Regulations come into force, is determined by the Secretary of State to be a ship that cannot reasonably be expected to comply with the requirements of the safety code and secures a passenger certificate under the 1995 Regulations within 2 years after the day the major modification commenced.

Subject to the grant of possible exemptions and recognition of equivalent requirements, a ship to which these Regulations apply is precluded from being put into service in the absence of initial, renewal, and annual surveys demonstrating that it meets construction standards set by a certifying authority and evidenced by a Partial Declaration of Survey of a Passenger Ship and meets mandatory safety requirements that are elaborated in a safety code set out in Merchant Shipping Notice 1823 (M). *Regulations 4 to 7 and 10*.

Such ships are required to have a safety management system in place and this is subject to in-service verification at any time. *Regulation 11*.

The satisfactory completion of initial and renewal surveys is evidenced by a passenger ship safety certificate issued by the Secretary of State. Satisfactory completion of annual surveys and safety management system in-service verifications are made the subject of an endorsement on the certificate



by the surveyor. Persons are precluded from obstructing or impeding a surveyor carrying out a safety management system in-service verification. *Regulations 8, 10 and 11.*

Certificates may be issued subject to conditions. *Regulation 9.*

The passenger ship safety certificate is valid for up to 5 years plus, in the case of a renewal survey done in the final 3 months of a certificate the period between that survey and the expiry date of that certificate. However, that is conditional on compliance with its conditions, on securing annual endorsement, any safety management in service verification endorsement to it not being suspended or cancelled under the regulations. *Regulation 12.*

Suspension may occur if, since the relevant survey, the ship is damaged or becomes deficient. *Regulation 13.*

Cancellation may occur if the passenger ship safety certificate or related Partial Declaration of Ship Survey is obtained on the basis of false information. *Regulation 14.*

Expired certificates and those that have been suspended or cancelled may be required to be surrendered. *Regulation 20.*

Provision is made for arbitration in cases where a dispute arises concerning the outcome of a survey or safety management system in-service verification. *Regulation 15.*

Certificates and additional survey reports are required to be kept on board ship and to be readily available. *Regulation 16.*

Provision is made for the owner and the master of the ship to bear continuing responsibilities regarding conformity with the construction standards and mandatory safety requirements both in terms of maintenance and in terms of addressing accidents that may occur or defects that may be discovered. *Regulation 17.*

Corrective action may be required if a surveyor finds a ship is deficient as regards its construction or compliance with mandatory safety requirements. If such action is not taken within a reasonable time the passenger ship safety certificate may be suspended. *Regulation 18.*

Provision is made for additional surveys to be carried out where required to address accidents that may have occurred or defects discovered as well as important repairs or renewals made to the ship. A repair or renewal is deemed not to be important if advice is sought of the Secretary of State and the Secretary of State does not advise within 21 days that the repair or renewal is considered important. *Regulation 19.*

Provision is made for detention of ships and for offences. *Regulations 21 to 23.*

A number of statutory instruments relating to passenger ship safety are disapplied for those ships to which the Safety Code will be applicable. *Regulation 24.*

A full impact assessment has been prepared and copies may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone number 02380 329100). It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website [www.opsi.gov.uk](http://www.opsi.gov.uk). A copy has been placed in the library of each House of Parliament.

Merchant Shipping Notices are published by the MCA. Copies may be obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays, Essex, RM17 9AY (telephone number 01375 484548; fax 01375 484556; email orders [mnotices@ecgroup.co.uk](mailto:mnotices@ecgroup.co.uk) ). They may also be accessed via the MCA's website <http://www.mcga.gov.uk> which also has details of any amendments or replacements.

The Chartered Institute of Arbitrators are located at the International Arbitration and Mediation Centre, 12 Bloomsbury Square, London WC1A 2LP and may be contacted on telephone 020 7421 7444.

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These Regulations were notified in draft to the European Commission in accordance with Directive [98/34/EC](#) (provision of information in the field of technical standards) as amended by Directive [98/48/EC](#).